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In re Application of:	:	
French et al.	:	
Application No.: 09/914,176	:	DECISION
PCT No.: PCT/GB00/00740	:	
Int. Filing Date: 01 March 2000	:	ON
Priority Date: 02 March 1999	:	
Atty. Docket No.: 78104.028	:	PETITION
For: Identification Of Bacteria By	:	
Amplification And Probing	:	

This is in response to the "Response To Decision Dated 12 January 2004" filed on 22 January 2004.

### DISCUSSION

In a Decision mailed on 12 January 2004, the petition filed on 06 October 2003 was dismissed without prejudice. The reason for dismissal was that petitioner had failed to satisfy the requirements of 37 CFR 1.8 (b)(3), which provides that

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding is dismissed, terminated or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

Specifically, it was not clear whether counsel allegedly personally deposited the correspondence with the United States Postal Service (USPS) on 13 November 2001, or whether he merely allegedly placed it in an outgoing mail bin in his office on said date. It was explained that the latter allegation would not be satisfactory in that it would tend to establish merely the *intent* to mail the correspondence, not that the correspondence was actually mailed. Petitioner

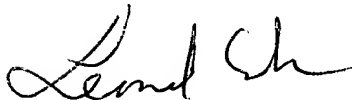
now clearly avers that he "personally deposited the envelope, along with two others, in the official U.S. Post Box that is located outside my office, on the evening of November 13, 2001." Petitioner also includes a copy of a "Return Post Card Log" which indicates that no return postcard receipt was received for this application. On the basis of the totality of the evidence now of record, it would be appropriate to consider the correspondence in question to have been timely filed. Therefore, the Notification of Abandonment is **VACATED**.

However, the computer readable form (CRF) included in the correspondence was technically flawed. Further, the declaration of the inventors is not acceptable in that applicant did not file complete copies of the declarations as signed by the inventors. Rather, the declaration appears to have been assembled using only the signed sheets from each declaration as signed by the inventors. Accordingly, the requirements set by the Notification of Missing Parts (Form PCT/DO/EO/905) mailed on 22 October 2001 have not yet been satisfied.

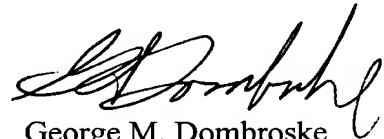
### **CONCLUSION**

The petition is **GRANTED**.

This application is being returned to the National Stage Processing Branch for preparation and mailing of a Notification of Defective Response (Form PCT/DO/EO/916) requiring the submission of an acceptable CRF and an oath or declaration of the inventors.



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